

STATE APPELLATE DEFENDER OFFICE

DAWN VAN HOEK
DIRECTOR

JONATHAN SACKS
DEPUTY DIRECTOR

www.sado.org
Client calls: 313.256.9822



MAIN OFFICE:
PENOBSCOT BLDG., STE 3300
645 GRISWOLD
DETROIT, MI 48226-4281
Phone: 313.256.9833 • Fax: 313.965.0372

LANSING OFFICE:
101 N. WASHINGTON, 14TH FLOOR
LANSING, MI 48913-0001
Phone: 517.334.6069 • Fax: 517.334.6987

Senate Judiciary Committee:

Legislative response to *Miller v Alabama* and youth serving unconstitutional mandatory sentences of life without parole.

**Testimony by: Jonathan Sacks, Deputy Director
September 17, 2013**

Background on SADO

The State Appellate Defender Office (SADO) is Michigan's only state-funded public defense services provider, and currently represents 17% of the indigent criminal defendants pursuing an appeal. SADO was created in 1969, and is overseen by the seven-member Appellate Defender Commission, which is appointed by Michigan's Governor.

***Miller v. Alabama*: Michigan mandatory sentences of life without parole for juvenile offenders unconstitutional**

In Miller v. Alabama, the United States Supreme Court held that states may no longer mandate life without parole sentences for children convicted of homicide offenses, affirming what the Court has acknowledged in this and previous decisions: youth are different for the purposes of criminal law and sentencing practices.

Writing for the Court in *Miller*, Justice Kagan affirmed the science behind the Court's decisions in *Roper v. Simmons*, *Graham v. Florida* and *J.D.B. v. North Carolina*. She noted—articulating a point that connects all three cases—“that imposition of a state's most severe penalties on juvenile offenders cannot proceed as though they were not children.”

Miller requires that an individualized approach be used in determining the extent of the punishment imposed, taking into account blameworthiness, proportionate sentencing and youths' distinctive capacity for rehabilitation and transformation. *Miller* made clear that Michigan's mandatory life without parole sentencing scheme for juveniles convicted of first degree murder is unconstitutional and must be reformed.

The process of imposing punishment must also comply with the mandates of *Miller*: a judge can no longer bypass important and relevant mitigating factors in sentencing an offender who was under 18 at the time of the crime. Mitigating factors that should be considered at sentencing include:

- The child's age and developmental attributes, including immaturity, impetuosity, and failure to appreciate risks and consequences;
- The child's family and home environment;
- The circumstances of the offense, including the extent of the child's participation and the way familial and peer pressures may have affected his or her behavior;
- The child's lack of sophistication in dealing with a criminal justice system that is designed for adults; and
- The potential for rehabilitation.

As the *Miller* Court noted, "*Graham, Roper, and [their] individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.*"

Michigan's response to *Miller* should realize that this Supreme Court decision is an opportunity to reverse decades of bad policy, not an obstacle.

SADO's role after *Miller v. Alabama*

As a key stakeholder in Michigan's criminal justice system, SADO is a crucial part of the discussion on the implications of *Miller v. Alabama* for over 350 Michigan prisoners serving life without parole for crimes they committed as children.

- SADO has 110 former and current clients serving sentences of life without parole for crimes committed as children. The Appellate Defender Commission has authorized SADO to represent these former clients in post-conviction proceedings necessitated by *Miller v. Alabama* as resources allow.

A snapshot of SADO's former clients serving life without parole for crimes committed as juveniles

- At least 20 of these clients were not the actual killers in a multiple co-defendant cases. Many were present at events due to the influence of peer pressure.
- At least 30 have co-defendants, often adults, serving less severe sentences.
- At least 29 had plea offers below the mandatory sentence of life without parole. Many had judges who stated on the record that they wished to impose a lesser sentence.

- These examples demonstrate what *Miller* was about – many of our clients were accomplices, not the actual murderers, and many were so unsophisticated that they were incapable of taking the plea bargains that their more culpable adult co-defendants took. Clients routinely said no to favorable plea deals based on misguided advice from their parents rather than the counsel of their attorneys.
- The average age of our clients is currently 35.6, meaning many have served more than twenty years in prison. Our oldest client, Daniel Wheeler, is 61 years old, and he has already served 42 years in prison.
- Over 50% of our clients were under 14, 15, or 16 years old at the time of the offense.
- 92 of our clients are MDOC levels I or II, the lowest possible security levels. Only 18 are the most serious, level IV or V, including some of the most recent offenders.

SADO's representation of clients sentenced to life without parole for crimes committed as children and the process of new sentences for our clients.

- Our representation will likely take the form of negotiated settlements in some cases and in others resentencing / mitigation hearings for clients sentenced under an unconstitutional scheme to mandatory life without parole.
- For the 103 cases on collateral appeal, Michigan courts have not yet resolved whether *Miller* will apply retroactively such that new sentencing hearings will be required. In *People v Carp*, 298 Mich App 472 (2012), the Court of Appeals found *Miller* not retroactive, but the case remains on appeal to the Michigan Supreme Court. **As a matter of fundamental fairness, Michigan should pass legislation that implements a response to *Miller* retroactively.**
- For these former clients, SADO hopes to begin the process of filing for resentencing following a legislative solution.
- SADO believes that individualized term-of-year sentences are appropriate for two reasons. First, the Court in *Miller* discussed the need for an individualized sentencing hearing that focuses on the unique nature of juvenile offenders. Second, *Graham v Florida*, 560 US ___ (2010) requires a meaningful opportunity for release from prison. Parolable life in Michigan, which contains a judicial veto, the possibility for a file review instead of a hearing, and a policy statement by the Department of Corrections that "life means life" is therefore not a meaningful opportunity for review for this category of offenders.

SADO supports a legislative fix that allows for a term of years sentence and applies to our former clients.

- A scheme for individualized sentencing, through a minimum sentencing range, would resolve the problems of the current mandatory scheme while allowing offenders and victim's families the opportunity to participate in sentencing hearings.
- Although *Miller* did not find the actual sentence of life without parole unconstitutional, the opinion states that such a sentence should be uncommon for individuals under the age of 18 at the time of the offense. The legislative solution must reflect this reality.
- The parole board will still have the final say. Regardless of the result of an individualized hearing, nobody will be released if they are still judged to be a threat to society.
- The longest running longitudinal study of violent juvenile offenders in this country, known as Pathways to Desistance, shows why a solution with a term of years outcome is such a good result. Funded by both the federal government and private organizations like the MacArthur Foundation Research Network, this long-term, multi-state investigation found that longer correctional stays do not reduce youth recidivism. Rather the vast majority of youth who commit felonies (91.5%) reduce their offending within three years regardless of what intervention they receive.